satisfied that the explanation offered by the accused is "untrue".

Mr. Hepworth intimated that he did not wish to go into the merits of this case. That being so, we make no order on this Reference, and the order made by Abbott, J. will, therefore, stand.

No order.

K. P. Y. ISMAIL v. S. SINNIAH.

[Orig. Civ. Juris. (Abbott, J.) April 30, 1951]

[Malacca — Civil Suit No. 81 of 1950]

Courts Ordinance (1948) s. 5(2) — Service of Summons — Summons may be served anywhere within the Federation — Rules of the Supreme Court Order 11 Rule 1.

This was an application to have a writ of summons dismissed on the ground that the writ, which was issued in the Settlement of Malacca, was served in the State of Johore. Reliance was placed upon Order 11 Rule 1 of the Rules of the Supreme Court (Straits Settlements) which provides that a writ should not be served outside the limits of the settlement without the prior sanction of the Court.

Held, that Section 5(2) of the Courts Ordinance gave power to serve the summons anywhere within the Federation of Malaya and therefore the application must be dismissed.

CIVIL SUIT.

S. Shunmugam for the plaintiff.

C. S. Jayaswal for the defendant.

Abbott, J. : — The first two grounds of the application have not been pursued and only the third ground remains for determination.

The plaintiff has commenced proceedings against the defendant upon a writ issued out of the High Court in the Settlement of Malacca. The plaintiff lives in Malacca and the cause of action appears to have arisen in Malacca; the defendant resides in the State of Johore and the writ was served upon him there. Application is now made that the action be dismissed on the ground that the writ was served upon the defendant outside the limits of the Settlement without the prior sanction of the Court as provided for in Order 11 rule 1 of the Rules of the Supreme Court (Straits Settlements), 1934. These rules were made under the authority of the Court Ordinance, (Cap. 10) of the Laws of the Straits Settlements. Following upon the Federation of Malaya Order in Council, 1948, the Settlement of Malacca became part of the Federation of Malaya, but Cap. 10 of the Laws of the Straits Settlements continued to be the valid law of the Settlement until it was repealed and replaced by the Courts Ordinance, No. 43 of 1948. This last-named enactment applies in respect of the whole of the Federation of Malaya and contains a sub-section, material to the present application, as follows :—

> 5(2). All summonses . . . . and other processes whatsoever, whether civil or criminal, issued . . . by the authority of any Court respecting any cause or matter within its jurisdiction shall have full force and effect and may be served . . . anywhere within the Federation."

The Straits Settlements' Rules of Court, however, remain operative within the Settlement of Malacca by virtue of section 110(3) of the Courts Ordinance, 1948, because they have not been revoked and replaced; but the operation of rule 1 of Order 11 has been restricted by the express provisions of the sub-section set out above. I can see no inconsistency or conflict between the rule and the sub-section. It is clear that the intention of the present Courts Ordinance was to confer a jurisdiction throughout the Federation of Malaya; rule 1 of Order 11 has become restricted insofar as it now requires the sanction of the Court only where service is sought to be effected upon a person outside the boundaries of the Federation of Malaya, of which the Settlement of Malacca is now a part.

The application is dismissed with costs.

WOON SIAK v. LIM THIAN CHEE.

[App. Civ. Juris. (Paul Storr, J.) May 5, 1951]

[J. B. — Rent Assessment Board Application No. 13 of 1950]

Control of Rent Ordinance 1948 s. 13(1)(d) — Whether notice to quit is essential before application is made for possession.

This was a reference made by the Johore Bahru Rent Assessment Board which raised the question whether a notice to quit was necessary before an application for recovery of possession under Section 13(1)(d) of the Control of Rent Ordinance 1948 is made. Counsel for the applicant submitted that no notice to quit was necessary as the application was based on the allegation of a nuisance or persistent annoyance caused by the respondent to the wife of the applicant and he submitted that the committing of the nuisance was a breach of the implied condition of the tenancy and therefore it was not necessary to serve a notice to quit to determine the tenancy. Counsel for the respondent relied on Section 13(3) of the Control of Rent Ordinance and argued that it was obligatory on the applicant first to serve a notice to quit determining the tenancy.

Held, that on the facts of this particular case a notice to quit was not necessary before bringing the application for possession under Section 13(1)(d) of the Control of Rent Ordinance.

RENT ASSESSMENT BOARD APPLICATION.

P. V. Charry for the applicant.

M. Ismail for the respondent.

Paul Storr, J. : — This was a reference made by the Johore Bahru Rent Assessment Board under section 10 of the Control of Rent Ordinance, 1948. After stating the facts of the case, the points on which the Board required opinion of the Court were :—

(a) whether a notice is necessary in respect of the litigation;

(b) whether the word "tenant" in section 13(1)-(e) if applied to the present case would mean the respondent.

On the reference, Mr. Charry appeared for the applicant and Mr. Ismail for the respondent.

I will first deal with point (b) and would say that the word "tenant" in section 13(1)(e) if applied to the present case would mean the respondent. However, I would add that it appears to have no relevance to the present case on the facts shown.

With regard to point (a), it was agreed by Counsel that the notice referred to was not a notice in respect of the litigation, but was as to whether a notice to quit was necessary before the applicant brought the present application. Now, the present application is made under section 13(1)(d) which reads :—

"13. (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely —

(d) where the tenant, or any other person occupying the premises under him, has been guilty of conduct constituting a nuisance or persistent annoyance to persons in the neighbourhood; or of using or permitting the use of the premises for illegal or immoral purposes; or of the breach of any written law under which any business is carried on upon the premises; or has caused substantial damage to the premises".

Mr. Charry for the applicant submitted that no notice was necessary in a case under this section.

Mr. Ismail for the respondent suggested that section 13(3) reads as follows :—

"13. (3) Nothing in this section shall be deemed to relieve a landlord from the necessity of determining the tenancy according to law."

made it obligatory for the applicant, if he wished to determine the tenancy, first to serve a notice to quit determining the tenancy.

The application in this case is based on the allegation of a nuisance or persistent annoyance caused by the respondent to the wife of the applicant, and Mr. Charry submitted that the committing of a nuisance is a breach of the implied condition of the tenancy and that therefore he could apply to Court for the ejectment of the tenant and the serving of a notice to quit was not in this case necessary to determine the tenancy.

On considering the matter, I have come to the opinion that the submission by Mr. Charry is correct and that on the facts of this particular case a notice to quit is unnecessary before bringing an application for possession under section 13(1)(d) of the Ordinance.

The answer to point (a) is therefore "No" and to point (b) "Yes". Costs fixed at $25/- to be paid by respondent to applicant.

Order accordingly.

PUBLIC PROSECUTOR v. TAY YAM PENG.

[App. Crim. Juris. (Wilson, J.) April 7, 1951]

[K. L. — Criminal Appeal No. 6 of 1951]

Opium and Chandu Proclamation s. 3(1) — Statement made to a Customs Officer — Whether admissible in evidence — Evidence Ordinance ss. 25 and 26 — Interpretations and General Clauses Ordinance 1948.

This was an appeal by the Public Prosecutor against the acquittal of the respondent on a charge under Section 3(1) of the Opium and Chandu Proclamation. The prosecution had sought at the trial to put in evidence a statement made by the respondent when he was in custody to a Senior Customs Officer which amounted to a confession. The learned President of the Sessions Court held that the statement was inadmissible.

Held, that the statement was rightly held to be inadmissible and that the appeal must be dismissed.

Cases referred to :—

(1) *Tan Shu En & Anor. v. Public Prosecutor* (1948) M.L.J. 196.

(2) *Man Woo v. Rex* (1951) M.L.J. 20; 11 M.L.R. 39.

CRIMINAL APPEAL.

A. M. Webb (D.P.P.) for appellant.

Respondent in person.

Wilson, J. : — The respondent was charged with an offence contrary to section 3(1) of the Opium and Chandu Proclamation as amended. The prosecution sought to put in evidence a statement made to a Senior Customs Officer which amounted to a confession. The Senior Customs Officer is a Chandu Officer within the meaning of the Opium and Chandu Proclamation. At the time the statement was made the respondent was undoubtedly in custody. The learned President of the Sessions Court held that he was bound by the decision in the case of *Tan Shu En & Anor. v. Public Prosecutor*[1] and that the statement made to the Senior Customs Officer while in custody was inadmissible. In as much as there was no other evidence against the respondent he was acquitted and discharged.

At the time of the original trial of the case of *Tan Shu En* the material interpretation ordinance in